Supreme Court, U.S.
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In The

Supreme Court of the United States

ANDREW LOCKHART,

Petitioner,

v.

NEDRA CHANDLER,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Congress, by enacting the Antiterrorism and Effective Death Penalty Assistance Act, stripped the federal courts of their authority, when determining whether a petitioner is entitled to a writ of habeas corpus pursuant to 28 U.S.C. § 2254, to consider decisions of the federal courts of appeals and state supreme courts that had applied clearly established precedent of this Court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Andrew Lockhart ("Lockhart"), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming the judgment of the United States District Court for the Northern District of Illinois that denied Lockhart's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

OPINIONS BELOW

The opinion of the Seventh Circuit, (Pet. App. 1-6), is reported at *Lockhart v. Chandler*, 446 F.3d 721 (7th Cir. 2006). The opinion of the District Court denying the writ and its opinion on rehearing, (Pet. App. 7-12), have not been published.

JURISDICTION

The judgment of the Seventh Circuit was entered on May 4, 2006. There were no petitions for rehearing. This petition is timely filed within 90 days. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

1. U.S. Const. amend. XIV, § 1 provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. 28 U.S.C. § 2254 provides, in pertinent part:

* * *

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

* * *

STATEMENT OF THE CASE

On August 13, 1993, Lockhart pled guilty to murder pursuant to a negotiated plea agreement that had been ratified by an Illinois trial judge. Before accepting Lockhart's guilty plea, the trial judge conducted a plea negotiation conference. At the plea negotiation conference the trial judge, on the record, promised Lockhart a specific

sentence of 35 years imprisonment with the Illinois Department of Corrections in exchange for his guilty plea. The trial judge, again on the record, recited the minimum and maximum penalties associated with the charge and then specifically promised Lockhart to sentence him to 35 years imprisonment in return for a plea of guilty. The trial court told Lockhart:

> The charge of murder carries a sentence of 20 bottom all the way up to 60. You had a conference and I indicated that if there was a plea of guilty in this case, I'd sentence you to 35 years in the Illinois Department of Corrections.

Later, the judge reiterated his promise:

> I have spent some considerable time on this case. When we initially conferenced it, we were not close to a resolution. Both the lawyers spent a lot of time bringing information to me regarding the relationship of the parties, what happened on the day in question. And I indicated at that time what I felt was the sentence that was appropriate was 35 years. That is still my position.

The judge never informed Lockhart that a three-year period of mandatory supervised release ("MSR") would be added to the end of his 35-year sentence. Nor was Lockhart ever informed of the MSR term by the prosecutor or by his own counsel. The State has never disputed these facts. Lockhart was 26 years old at the time he pled guilty and had no prior criminal record. He waived a panoply of constitutional protections afforded by the Fifth and Sixth Amendments in return for the bargained promise from the State of Illinois. Despite making specific promises to Lockhart in exchange for his guilty plea, the state court imposed the MSR term as part of Lockhart's sentence.

Both the Seventh Circuit and the Illinois Supreme Court have recognized that the imposition of an MSR term is a substantial addition to Lockhart's sentence. *E.g.*, *People v. Whitfield*, 217 Ill.2d 177, 195, 840 N.E.2d 658, 669 (2005). A three-year MSR term is nearly 1,100 days of additional time with limited personal freedom, unquestionably making it qualitatively different from the sentence Lockhart bargained for, in a way he did not contemplate when he entered his plea deal. The Seventh Circuit has previously found it beyond question that MSR places "a number of onerous burdens on the liberty of paroled individuals." *United States ex rel. Baker v. Finkbeiner*, 551 F.2d 180, 184 (7th Cir. 1977). These burdens include, *inter alia*, requiring permission of state officials before changing residence, changing employment, or leaving Illinois, consent to a variety of searches, and suffering a generalized reduced expectation of privacy. *E.g.*, 730 ILCS 5/3-3-7(a).

After learning that he would be subject to the MSR term, Lockhart filed a *pro se* post-conviction petition in the state trial court, which was summarily dismissed. On May 9, 2002, Lockhart filed a notice of appeal. The Illinois Public Defender's Office was appointed to represent Lockhart on appeal but promptly filed a motion to withdraw as counsel. The Illinois Appellate Court granted counsel's motion to withdraw and affirmed the trial court's decision on February 10, 2003. Lockhart then petitioned the Illinois Supreme Court for leave to appeal. On December 3, 2003, that petition was denied.

Having exhausted his state remedies, Lockhart filed, *pro se*, his petition for a writ of habeas corpus in the District Court. The District Court had jurisdiction to hear Lockhart's claim pursuant to 28 U.S.C. §§ 1331, 2241(a).

Lockhart's petition alleged that his due process rights were violated when the sentencing judge failed to admonish him concerning the MSR term, so that he is not receiving the benefit of his bargain under the negotiated plea agreement. On April 16, 2004, the district court denied Lockhart's petition on the ground that Lockhart had failed to allege a constitutional violation. The District Court denied Lockhart's motion for reconsideration and declined to issue a certificate of appealability.

Lockhart filed a notice of appeal to the Seventh Circuit, which subsequently granted Lockhart's request for a certificate of appealability and appointed Foley & Lardner LLP to represent him *pro bono*. The Seventh Circuit had jurisdiction pursuant to 28 U.S.C. §§ 1291, 2253.

In affirming the district court, the Seventh Circuit misinterpreted 28 U.S.C. § 2254 by finding that it was powerless to consider four of its own prior opinions and a December 2005 opinion of the Illinois Supreme Court, each of which had found similar impositions of MSR – in addition to agreed-upon sentences promised in exchange for a guilty plea – to be unconstitutional under the clearly established precedent of this Court. Reaching this conclusion, the Seventh Circuit committed two separate errors.

First, the Seventh Circuit determined that under the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132 ("AEDPA"), it could not consider lower federal court decisions applying and interpreting established Supreme Court precedent to determine if the State had violated clearly established federal law, as determined by the Supreme Court. (Pet. App. 4-6). Believing itself barred by Congress from considering this relevant judicial precedent, the Seventh Circuit refused to grant

the specific relief sought by Lockhart even though the Seventh Circuit historically, and the Illinois Supreme Court as recently as December 2005, had granted the same relief to petitioners in the same position as Lockhart. In each of those other instances, the lower courts had expressly and predominantly relied on this Court's precedent, which Lockhart also relied on as the basis for relief below. In declining to consider lower courts' applications of this Court's rulings, the Seventh Circuit created a split with at least six other federal circuits, each of which has recognized the propriety of considering applications of this Court's rulings by lower federal courts to determine if a state court decision is an unreasonable application of this Court's precedent.

Second, the Seventh Circuit determined that Lockhart's claim was not based on federal law as announced by this Court. (Pet. App. 4-5). The Seventh Circuit essentially made this decision because precisely the same factual situation as Lockhart's has never been presented to this Court. (Pet. App. 6). This was erroneous because numerous rulings by this Court, going back more than 35 years, clearly establish that guilty pleas in criminal cases must comport with the requirements of due process. In reaching its decision, the Seventh Circuit did not even cite or address this Court's precedent relied upon by Lockhart.

Lockhart now petitions this Court for a writ of certiorari to resolve the conflict among the circuits regarding the meaning of the AEDPA and to correct the errors committed by the Seventh Circuit.

REASONS FOR GRANTING THE WRIT

A. The Seventh Circuit's Decision To Ignore Federal Court Of Appeals And Illinois Supreme Court Decisions Applying This Court's Clearly Established Precedent Is Inconsistent With The Rulings Of Six Other Circuits

The standards set forth in AEDPA govern Lockhart's petition for a writ of habeas corpus. *See Woodford v. Garceau*, 538 U.S. 202, 210 (2003). Under the AEDPA, a writ of habeas corpus can issue only if the state court's decision (1) was "contrary to" clearly established federal law as determined by the Supreme Court; (2) involved an "unreasonable application" of the same; or (3) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

A decision is contrary to clearly established federal law "if the state court arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or if the state court decides a case differently than [the Supreme Court] has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 413 (2000). A decision represents an "unreasonable application" of clearly established federal law "if the state court identifies the correct governing legal principle from [the Supreme Court's] decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id.* at 413. *Williams* and other rulings from this Court make clear "that broad principles can qualify as clearly established law. . . . " *See* Melissa M. Berry, *Seeking Clarity in the Federal Habeas Fog: Determining What Constitutes 'Clearly Established' Law under the Antiterrorism and Effective Death Penalty Act*, 54 Cath. U. L. Rev. 747, 788 (2005).

In affirming the District Court's decision, the Seventh Circuit expressly declined to consider its own precedent and a recent Illinois Supreme Court case, (Pet. App. 6), all of which applied clear holdings by this Court in factual situations nearly identical to Lockhart's and afforded the petitioner relief for the constitutional violation. The Seventh Circuit's decision in this case highlights a split among the circuits concerning a key principle of federal habeas corpus jurisprudence – whether, in enacting the AEDPA, Congress stripped federal courts of the ability, in deciding if habeas relief is warranted, to consider federal court and state supreme court decisions that apply clearly established federal law as announced by this Court. The Seventh Circuit alone has held that Congress intended to circumscribe the authority of the federal courts to consider and rely on such authority. (Pet. App. 6).

Six other circuits have expressly held to the contrary – holding that it is permissible, in evaluating habeas petitions under 28 U.S.C. § 2254(d)(1), to consider as persuasive authority the rulings of lower federal courts applying this Court's precedent. A sampling of the precedent from other circuits shows that, unlike the Seventh Circuit, they have successfully used lower court decisions in evaluating habeas petitions under Section 2254(d)(1) to examine how the precedent of this Court has been applied, without creating new rights or overstepping the restriction that the source of federal law for purposes of Section 2254(d)(1) must be this Court.

The First Circuit has stated that, while federal court of appeals' decisions "are not 'clearly established' for the purposes of Section 2254(d)(1) because they do not issue from the Supreme Court, they provide significant insight on what constitutes reasonableness for a particular fact

pattern." *Phoenix v. Matesanz*, 233 F.3d 77, 83 n.3 (1st Cir. 2000) (citation omitted). Such cases "may be especially helpful when the governing Supreme Court precedent articulates a broad principle that applies to a wide variety of factual patterns." *Ouber v. Guarino*, 293 F.3d 19, 26 (1st Cir. 2002). The First Circuit applied this Court's general principles and rules regarding the standard for ineffective assistance of counsel by looking to lower federal court decisions. *Id.*

Likewise, the Third Circuit, reviewing habeas petitions under 28 U.S.C. § 2254, has found that inferior federal court decisions can be helpful amplifications of Supreme Court precedent. *E.g.*, *Chadwick v. Janecka*, 312 F.3d 597, 613 (3d Cir. 2002) (Alito, J.); *Hardcastle v. Horn*, 368 F.3d 246, 256 n.3 (3d Cir. 2004). In *Hardcastle*, the Third Circuit relied on its own precedent to amplify this Court's precedent to find that a habeas petitioner had shown that a state court unreasonably applied this Court's decision in *Batson v. Kentucky*, 476 U.S. 79 (1986), regarding the use of peremptory challenges in jury selection. *Hardcastle*, 368 F.3d at 257-60.

The Sixth Circuit has also approved the use of the federal court of appeals' decisions as "informative to the extent [courts] have already reviewed and interpreted the relevant Supreme Court case law to determine whether a legal principle or right has been clearly established by the Supreme Court." *Hill v. Hofbauer*, 337 F.3d 706, 716 (6th Cir. 2003). The Sixth Circuit examined pre-AEDPA lower court decisions as an aid in determining what constitutes an unreasonable application of this Court's clear precedents. *Id.* at 716-17. Likewise, the Eleventh Circuit has stated that lower court decisions can be helpful in determining the requirements of this Court's

precedent. *See Hawkins v. Alabama*, 318 F.3d 1302, 1309 (11th Cir. 2003).

The Ninth Circuit recently ruled that lower court decisions applying this Court's precedent have persuasive value regarding what federal law is clearly established and what actions constitute an unreasonable application of such law. *Musladin v. Lamarque*, 427 F.3d 653, 655-56 (9th Cir. 2005) (collecting authority), *cert. granted*, *Carey v. Musladin*, 126 S. Ct. 1769 (2006). Importantly, the Ninth Circuit, like every other court of appeal listed above, clearly recognized that federal lower court precedent cannot constitute the source for a constitutional right reviewed under the AEDPA. *Id.* at 655.[1]

This Court granted the State of California's petition for a writ of certiorari in *Carey v. Musladin*, No. 05-785, 126 S. Ct. 1769 (2006), on the narrow question of whether the Ninth Circuit exceeded its authority under 28 U.S.C. § 2254(d)(1) by granting habeas relief in the absence of controlling precedent from this Court. While that question touches on some of the same issues as this one, the current case is distinct in that it seeks reversal of the Seventh Circuit's error in declining to apply lower court decisions that apply this Court's clear precedent of the last 35 years. Both this case and *Musladin* arguably raise the question of whether under 28 U.S.C. § 2254 federal courts can consider lower court opinions applying this Court's precedents. However, while *Musladin* is more focused on

[1] While less expansive, the Fourth Circuit, discussing *Williams v. Taylor*, announced that there is no "absolute prohibition" in cases under Section 2254 against considering lower courts' applications of Supreme Court precedent. *Bell v. Jarvis*, 236 F.3d 149, 174 (4th Cir. 2000) (en banc).

whether the Ninth Circuit's decision was based on this Court's clearly established precedent, the current petition seeks to fill in the larger picture by addressing the question of what body of law can federal courts consider when determining if a state court decision is an unreasonable application of federal law as announced by this Court. Moreover, as detailed *infra*, the lower court decisions Lockhart relied on below are clearly anchored in over 35 years of this Court's clear precedents.

Each of these circuits has recognized the important role that decisions of lower federal courts can and should play in determining whether clearly established law, as announced by this Court, exists. In essence, the Seventh Circuit's approach creates a situation where only cases that are completely similar factually to a past decision by this Court can serve as the basis for granting habeas relief. This could not have been the result envisioned by Congress in enacting the AEDPA, especially given the discrete number of cases this Court can decide compared to the vast number of possible factual permutations of clearly established general constitutional principles. Indeed, taken to the extreme, a district court considering a habeas petition would be barred from considering a binding circuit court opinion – even one factually similar – that applied this Court's clearly established precedent. *See* Evan Tsen Lee, *Section 2254(d) of the New Habeas Statute: An (Opinionated) User's Manual*, 51 Vand. L. Rev. 103, 131-32 (1998).

The Seventh Circuit in the present case is alone in its stance of completely refusing to consider its own prior precedent that applied the clear rules announced by this Court that pleas in criminal cases must comport with due process and that when a plea bargain is made promising a

specific sentence to a defendant, the state must make good on that promise. The Seventh Circuit's decision in this case creates a split from the rule adopted by other circuits. Certiorari is warranted to resolve this stark conflict in statutory interpretation of an important federal statute.

B. The Seventh Circuit's Decision Violated This Court's Prior Determination That Guilty Pleas In Criminal Cases Must Comport With The Requirements Of Due Process And That The Government Must Live Up To The Terms Of A Plea Bargain

Had the Seventh Circuit not unnecessarily limited itself to considering only the cases actually decided by this Court, and instead considered its own rulings and a recent decision by the Illinois Supreme Court applying this Court's precedents, Lockhart would have been successful in his appeal below. For decades, this Court has clearly stated that criminal pleas must comport with the requirements of due process. The Court recognized in *Boykin v. Alabama* that a guilty plea cannot be accepted, consistent with due process of law, unless there is affirmative evidence that it was voluntarily and knowingly entered by the defendant. 395 U.S. 238, 243-44, n.5 (1969). The Court further explained this principle a year later, holding that in order for a plea to be knowing and voluntary, the defendant must be aware of the "direct consequences" of his plea. *Brady v. United States*, 397 U.S. 742, 755 (1970).

Again, the following year, the Court made clear that due process requires that when a plea is entered based on specific promises of a state, those promises must be fulfilled. *Santobello v. New York*, 404 U.S. 257, 262 (1971). There, a defendant pled guilty based on a promise from

the state that it would not make a recommendation regarding sentencing. *Id.* at 258-59. The state subsequently failed to live up to the promise it made to the defendant, and the defendant sought relief. *Id.* As this Court stated:

> [W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.

Id. at 262. *Boykin*, *Brady*, and *Santobello* establish – in the words of AEDPA "clearly establish" – that criminal defendants are entitled to due process when entering guilty pleas and that when a plea bargain is made, due process requires a state live up to its terms.

There is no factual dispute in this case – Lockhart is being required to serve a substantially different, and longer, sentence than the one that he accepted in return for his plea of guilty – one longer than the state court sentencing judge announced on the record as part of the inducement for the guilty plea. This record unequivocally establishes that Lockhart's constitutional due process rights under *Boykin*, *Brady*, and *Santobello* were violated. It is undisputed that Lockhart was not informed of the three-year term of MSR at the time he pled guilty. Lockhart will suffer significantly reduced liberty rights during the MSR term of his sentence. *E.g.*, 730 ILCS 5/3-3-7(a). Hence, the sentence imposed on Lockhart constitutes a "substantial addition" to the sentence he agreed to. *See Baker*, 551 F.2d at 183. Finally, the transcript from the plea and sentencing hearing firmly establishes that the trial court ratified Lockhart's agreement with the prosecutor. The record demonstrates that the court's promise was not fulfilled, and Lockhart's due process rights established

in *Santobello* were violated. *Santobello*, 404 U.S. at 262. While the facts in Lockhart's case are not exactly the same as in *Santobello*, the same due process principles apply here – the state made promises in exchange for a guilty plea and now refuses to deliver. Moreover, Lockhart did not know the direct consequences of his guilty plea – that he would have to serve a three-year MSR term – because the state never told him about it.

The Seventh Circuit quoted two decisions from this Court for the erroneous proposition that due process does not require that a criminal defendant be informed of an MSR term before pleading guilty. The first is *Lane v. Williams*, 455 U.S. 624, 630 n.9 (1982): "We do not decide whether, to establish such a constitutional violation, respondents must claim that they in fact did not know of the parole requirement at the time they pleaded guilty or that they would not have pleaded guilty. . . . " However, the Court in *Lane* did not address the question of whether failure to admonish a defendant about an MSR term as part of a plea violates the Constitution; rather, the Court merely declined to decide what a petitioner must claim or, in other words, what a petitioner must plead and prove, in order to establish a constitutional violation. Indeed, the constitutional right to have criminal pleas comport with due process had already been clearly established in *Boykin*, *Brady*, and *Santobello*. Furthermore, the violation of Lockhart's rights here is based not only on the failure of the trial judge to tell him about the MSR addition to his sentence, but also the state's failure to live up to the plea deal it made with Lockhart. *Santobello*, 404 U.S. at 262.

Hill v. Lockhart, 474 U.S. 52 (1985), also relied on by the Seventh Circuit, is inapposite. *Hill* found that no constitutional violation occurs when a defendant pleads

guilty without being informed about parole eligibility. *Id.* at 56. This means that a criminal defendant does not have to know about his eligibility for an early release from his sentence, *i.e.*, a benefit the government might voluntarily confer by statute. In sharp contrast, the current case involves a situation where the state seeks to add to a criminal sentence and thereby impose a serious detriment on Lockhart by severely restricting his liberties for a three-year period without ever telling him this would be the consequence of his guilty plea. *Hill* has no application here.

The Court clearly established in *Boykin*, *Brady*, and *Santobello* that criminal pleas must comport with the requirements of due process. Indeed, the Seventh Circuit, until this case, applied that principle for decades to petitioners similarly situated to Lockhart. *See United States ex rel. Russo v. Atty. Gen. of Ill.*, 780 F.2d 712, 716-19 (7th Cir. 1986); *United States ex rel. Miller v. McGinnis*, 774 F.2d 819, 823-25 (7th Cir. 1985); *Baker*, 551 F.2d at 183-84; *United States ex rel. Ferris v. Finkbeiner*, 551 F.2d 185, 186-87 (7th Cir. 1977). Notably, in these cases the Seventh Circuit relied heavily on *Santobello* and *Boykin*. Most recently, the Illinois Supreme Court recognized that the imposition of an MSR term where a defendant was not admonished of the term before entering a guilty plea violates due process and ordered that the sentence of imprisonment be reduced by the term of the MSR as a remedy for the constitutional violation. *Whitfield*, 217 Ill.2d at 177, 840 N.E.2d at 658. Like the Seventh Circuit, the Illinois Supreme Court premised its ruling on *Boykin* and *Santobello*, as well as other precedent from this Court. *See id.* at 664, 666, 668, 673-75.

CONCLUSION

The Seventh Circuit has erroneously read 28 U.S.C. § 2254 to preclude it from considering lower court opinions applying this Court's clearly established precedent. In doing so, the Seventh Circuit has departed from the rule adopted by the majority of circuits that lower court opinions can and should play an essential role in determining how this Court's precedent should be applied to habeas corpus petitions. This Court's long history of precedent, starting with *Boykin*, *Brady*, and *Santobello*, and applied by numerous lower courts, clearly states that pleas in criminal cases must be made knowingly and voluntarily in order to satisfy the requirements of due process. Where a plea bargain is made – in exchange for a waiver of constitutional rights – a state must live up to its terms. This rule has been applied by numerous state and federal courts including, until the current case, the Seventh Circuit. The Seventh Circuit's ruling in this case undermines more than 35 years of this Court's jurisprudence. Accordingly, Lockhart respectfully requests that this Court grant the writ of certiorari and hear this case on the merits. Alternatively, this Court should defer ruling on this petition until after *Carey v. Musladin*, No. 05-785, is decided, as a ruling in that case could affect Lockhart's petition on the merits.

Respectfully submitted,

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446 F.3d 721

In the
United States Court of Appeals
for the Seventh Circuit

No. 04-3223

ANDREW LOCKHART,

Petitioner-Appellant,

v.

NEDRA CHANDLER,
Warden of the Dixon
Correctional Center,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 03 C 9194 – **Suzanne B. Conlon**, *Judge.*

ARGUED FEBRUARY 8, 2006 – DECIDED MAY 4, 2006

Before MANION, KANNE, and EVANS, Circuit Judges.

KANNE, *Circuit Judge.* Andrew Lockhart pled guilty to murder in Illinois state court. He faced a prison sentence of 20 to 60 years, and ultimately received 35. Lockhart is before us now on the denial of his 28 U.S.C. § 2254 petition by the district court. Lockhart's sole claim is that the state trial judge failed to advise Lockhart at the change of plea hearing that a three-year period of mandatory supervised

release ("MSR") would accompany the 35-year prison sentence. Therefore, according to Lockhart, the MSR should be eliminated from his sentence. The district court was not convinced, and for slightly different reasons, we agree, and affirm.

I. HISTORY

On April 4, 1993, Lockhart forced his way into his estranged wife's apartment, spoke with her for an hour, and then shot her. As she was lying on the ground, Lockhart shot her again at close range. On August 13, 1993, Lockhart pled guilty to one count of first degree murder, pursuant to a plea agreement. During the change of plea hearing, the state trial judge admonished Lockhart about the usual list of rights being waived, such as the right to a trial by jury and the right to call witnesses on his behalf. The trial judge also properly advised Lockhart of the minimum and maximum sentences he faced, should he elect to plead guilty. Lockhart stated he understood the consequences of his plea, and he pled guilty. It is undisputed Lockhart's only complaint is that the judge did not advise him of the MSR term, *see* 730 ILCS 5/5-8-1(d) ("[E]very sentence shall include as though written therein a term in addition to the term of imprisonment. . . . For those sentenced on or after February 1, 1978, such term shall be identified as a mandatory supervised release term."), a condition of his sentence that Lockhart did not learn about until later.

Lockhart's case followed the typical progression of appellate review through the state courts prior to the filing of his § 2254 petition in the district court. At every stage, his case was unsuccessful. We granted a certificate

of appealability for the following issue: "[W]hether the state court violated [petitioner's] due process rights by failing to notify him before he pleaded guilty that a mandatory three-year term of supervised release would be appended to his sentence."

II. ANALYSIS

"[I]n habeas cases, we review the district court's factual findings for clear error and its legal conclusions de novo." *Charlton v. Davis,* 439 F.3d 369, 372 (7th Cir. 2006) (citation omitted). Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA"), we may grant habeas corpus relief only if the state court's decision is contrary to or employs an unreasonable application of clearly established federal law as determined by the United States Supreme Court. 28 U.S.C. § 2254(d)(1); *Williams v. Taylor,* 529 U.S. 362, 367 (2000). A decision is "contrary to" clearly established federal law "if the state court arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or if the state court decides a case differently than [the Supreme Court] has on a set of materially indistinguishable facts." *Williams,* 529 U.S. at 413. A decision represents an "unreasonable application" of clearly established federal law "if the state court identifies the correct governing legal principle from [the Supreme Court's] decisions but unreasonably applies that principle to the facts of the prisoner's case." *Id.*

Lockhart argues his due process rights were violated when the trial court failed to inform him of the three years of MSR that would follow his 35-year prison sentence. The district court found Lockhart had merely alleged a violation of Illinois Supreme Court Rule 402 in failing to advise

of the MSR term.[1] That was not enough, said the district court, to show he was entitled to *federal* habeas relief. While it is certainly arguable that the Illinois trial court did not follow Rule 402, *see, e.g., People v. Miller,* 438 N.E.2d 643, 648 (Ill. App. Ct. 1982) (citing *People v. Wills,* 508 N.E.2d 505, 508 (Ill. 1975)) (noting that Rule 402(a)(2) requires that a defendant be advised of any MSR term), we part ways with the district court and find Lockhart's petition adequately raised a federal due process claim. His original petition is replete with references to an alleged violation of federal due process, with correct legal citations to previous rulings of this court (as well as Illinois cases) addressing federal due process claims. But therein lies the real root of Lockhart's problem: Pointing to mostly pre-AEDPA cases from this circuit as well as from Illinois is a far cry from showing the state court contradicted, or unreasonably applied, clearly established federal law *as determined by the Supreme Court,* which Lockhart is required to do.

In fact, cases from the Supreme Court on the subject tend only to cut against Lockhart's claim. There is no Supreme Court precedent for the proposition that a defendant must be advised of a term of MSR at the time he attempts to enter a plea of guilty. Quite the contrary, the Court has expressly declined to decide such an issue in the very similar context of parole. *See Lane v. Williams,* 455 U.S. 624, 630 n.9 (1982) ("We do not decide whether, to

[1] Without going into too much detail, suffice it to say Rule 402 requires an Illinois trial court to inform a defendant at a change of plea hearing of the nature of the charge, the minimum and maximum sentences, and the various rights the defendant is waiving by pleading guilty. Furthermore, the Rule requires, among other things, that the court determine whether the plea is voluntary.

establish such a constitutional violation, respondents must claim that they in fact did not know of the parole requirement at the time they pleaded guilty or that they would not have pleaded guilty had they known of this consequence.").

Therefore, Lockhart faces an impossible hurdle in showing the state court contradicted, or unreasonably applied, clearly established federal law as determined by the Supreme Court because the Court has expressly declined to decide the issue. *See Hill v. Lockhart,* 474 U.S. 52, 56 (1985) ("We have never held that the United States Constitution requires the State to furnish a defendant with information about parole eligibility in order for the defendant's plea of guilty to be voluntary, and indeed such a constitutional requirement would be inconsistent with the current rules of procedure governing the entry of guilty pleas in federal courts.") (citations omitted). As a result, there can be no Supreme Court precedent to be contradicted or unreasonably applied. In a similar vein, not only has Lockhart failed to point to a relevant Supreme Court case, but our own search, along with those of other federal courts, have also failed to locate such a case. *See Shabazz v. Perlman,* No. 04 Civ. 4355, 2005 WL 2105533, at *6 (S.D.N.Y. Sept. 1, 2005) (explaining that the district court was "unable to find any Supreme Court case that requires a state court judge to advise a defendant of mandatory post-release supervision before accepting a guilty plea"); *Lustyk v. Murray,* No. 03-CV-6186L, 2004 WL 1949473, at *2 (W.D.N.Y. Aug. 30, 2004) (explaining the district court could not find, nor could petitioner cite, to any Supreme Court case holding that a mandatory term of parole or post-release supervision is a direct consequence of a guilty plea).

The main thrust of Lockhart's argument on appeal is that "this Court (on multiple occasions) and the Illinois

Supreme Court have held that the precise conduct which everyone now acknowledges occurred in the sentencing of Lockhart violated his federal constitutional rights." The cases Lockhart refers to (of which most were issued prior to the AEDPA and are over 20 years old) *cite* to cases from the United States Supreme Court, and therefore, according to Lockhart, his right to be informed of the MSR term was clearly established by the Supreme Court. But as the AEDPA makes clear, we (and state supreme courts) do not have the authority in these types of cases to establish new constitutional rights. While we may have cited to cases from the Supreme Court in those older cases, that action simply cannot be taken to mean the Supreme Court had determined that a right had been clearly established. Rather, under the explicit terms of the AEDPA, we must consider the actual language and analysis contained in Supreme Court cases to determine whether a right has been clearly established. As explained above, we are unable to discern from the Supreme Court's cases that an individual like Lockhart had a clearly established right to be informed of the MSR, nor has Lockhart pointed to such a case.

III. CONCLUSION

For the reasons set forth above, the district court's decision to deny Lockhart's § 2254 petition is AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 03 C 9194

Andrew Lockhart,

Petitioner,

v.

Nedra Chandler, Warden of the
Dixon Correctional Center,

Respondent.

(Filed April 16, 2004)

ORDER

Andrew Lockhart pleaded guilty to first degree murder and was sentenced to 35 years in prison on August 13, 1993. Pet. Ex. A (Mittimus). Lockhart did not appeal. Pet. at 2. In 1997, Lockhart's first post-conviction petition was summarily dismissed. The Illinois Appellate Court affirmed. *People v. Lockhart*, No. 1-96-0632 (1997). Lockhart's motion to file a second post-conviction petition was denied. The Appellate Court affirmed, *People v. Lockhart*, No. 1-97-4110 (1998) (Pet. Ex. B). In 2002, Lockhart filed a post-conviction petition challenging his sentence. The trial court summarily dismissed the petition. On appeal, Lockhart's attorney submitted a brief stating Lockhart had no arguable basis for collateral relief and withdrew. The appellate court granted the attorney's motion to withdraw and affirmed the trial court's dismissal of the petition without comment. *People v. Lockhart*, No. 1-02-1550 (2002) (Resp. Ex. A). The Illinois Supreme Court denied the petition for leave to appeal. *People v. Lockhart*,

No. 97037 (2003) (Resp. Ex. C). Pursuant to 28 U.S.C. § 2254, Lockhart petitions for a writ of *habeas corpus*. He argues that the judge who accepted his guilty plea failed to advise him that a three year period of mandatory supervised release would follow his 35 year sentence.

Habeas relief is proper only if the state court's decision is contrary to or employs an unreasonable application of Supreme Court precedent. 28 U.S.C. § 2254(d)(1); *Williams v. Taylor,* 529 U.S. 362, 367 (2000). Lockhart bears the burden of demonstrating the state court's decision was an objectively unreasonable application of the law or was premised on an unreasonable reading of the facts, *Woodford v. Visciotti*, 537 U.S. 19, 25 (2002). Lockhart's sole claim is that at the time of his guilty plea, the sentencing court failed to admonish him his sentence would include three years mandatory supervised release and thereby violated his right to due process. It is undisputed that the sentencing judge did not inform Lockhart about the three year period of mandatory supervised release. However, the state correctly points out that Lockhart has merely alleged a violation of Illinois Supreme Court Rule 402, and is therefore not entitled to federal *habeas* relief. *United States ex rel. Earl v. Snyder,* No. 03 C 5046, 2003 WL 22327059 at *1 (N.D. Ill. Oct. 9, 2003); *Fortenberry v. Sternes,* No. 02 C 8545, 2003 WL 21939558, at *2 (N.D. Ill. Aug. 13, 2003). Although the petition attempts to state a due process violation, Lockhart fails to allege his guilty plea was not knowing and voluntary. The sentencing judge's failure to inform Lockhart of the mandatory supervised release period does not establish a *per se* constitutional violation. *Earl,* 2003 WL 22327059 at *1; *Fortenberry,* 2003 WL 21939558 at *2; *People v. Smith*, 285 Ill. App.3d 666, 669, 676 N.E.2d 224

(Ill. App. Ct. 1996), Lockhart does not assert that the court's failure to inform him of the mandatory supervised release term unfairly induced him to plead guilty. *Santobello v. New York*, 404 U.S. 257, 263, 92 S. Ct. 495 (1971); *United States ex rel. Miller v. McGinnis*, 774 F.2d 819, 823-24 (7th Cir. 1985); *Baker v. Finkbeiner*, 551 F.2d 180, 184 (7th Cir. 1977); *People v. Wills*, 61 Ill.2d 105, 330 N.E.2d 505 (1975). Indeed, the sentencing transcript indicates Lockhart was fully aware of the consequences of his guilty plea. Lockhart affirmed that he had a clear understanding of the charges and, possible penalties. Pet. Ex. A at 6-8.

Lockhart has not demonstrated that denial of post-conviction relief was contrary to established Supreme Court precedent Lockhart's claim amounts to an allegation that the sentencing judge violated Illinois Supreme Court Rule 402. An error by an Illinois court in applying its own rules is not cognizable in *habeas corpus* proceedings. *Earl*, 2003 WL 22327059 at *1; *Fortenberry*, 2003 WL 21939558 at *2.

/s/ Suzanne B. Conlon

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 03 C 9194

Andrew Lockhart,
Petitioner,

v.

Nedra Chandler, Warden of the
Dixon Correctional Center,
Respondent.

(Filed July 30, 2004)

ORDER

Andrew Lockhart pleaded guilty to first degree murder and was sentenced to 35 years in prison on August 13, 1993. Pet. Ex. A (Mittimus), Lockhart did not appeal. Pet. at 2. In 1997, Lockhart's first post-conviction petition was summarily dismissed. The Illinois Appellate Court affirmed. *People v. Lockhart*, No. 1-96-0632 (1997). Lockhart's motion to file a second post-conviction petition was denied. The Appellate Court affirmed. *People v. Lockhart*, No. 1-97-4110 (1998) (Pet. Ex. B). In 2002, Lockhart filed a post-conviction petition challenging his sentence. The trial court summarily dismissed the petition. On appeal, Lockhart's attorney submitted a brief stating Lockhart had no arguable basis for collateral relief and withdrew. The appellate court granted the attorney's motion to withdraw and affirmed the trial court's dismissal of the petition without comment. *People v. Lockhart*, No. 1-02-1550 (2002) (Resp. Ex. A). The Illinois Supreme Court denied the petition for leave to appeal. *People v. Lockhart*, No. 97037 (2003) (Resp. Ex. C).

Lockhart's petition for a writ of *habeas corpus* was denied April 16, 2004. Minute Order, 4/16/04, Doc. No. 16. His sole claim was that the judge who accepted his guilty plea failed to advise him that a three year period of mandatory supervised release would follow his 35 year sentence. On April 30, 2004, Lockhart filed a motion for reconsideration and requests a certificate of appealability. Pursuant to Fed. R. App. P. 22(b), the court must either issue a certificate of appealability or state the reasons why a certificate should not issue.

Motion for Reconsideration

Lockhart moves the court to reconsider its April 16, 2004 order denying the *habeas* petition. Motions for reconsideration are not a vehicle for a party to introduce new evidence or legal theories that could have been presented earlier, nor are they at the disposal of parties who want to rehash the old arguments. *Bank of Waunakee v. Rochester Cheese Sales, Inc.*, 906 F.2d 1185, 1191 (7th Cir. 1990), Lockhart's motion is meritless; it merely reiterates the arguments and facts considered in the April 16, 2004 order. Accordingly, the motion to reconsider is denied.

Certificate of Appealability

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2). When a *habeas* petition is denied on the merits, the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484

(2000). For the reasons stated in the court's April 16, 2004 order, reasonable jurists could not find this court's assessment of Lockhart's claim is debatable or wrong. Accordingly, the court may not issue a certificate of appealability.

/s/ Suzanne B. Conlon

(2)

FILED
OCT 16 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-170

In the Supreme Court of the United States

ANDREW LOCKHART, PETITIONER,

v.

NEDRA CHANDLER, WARDEN, RESPONDENT.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Seventh Circuit correctly held that habeas relief may be granted pursuant to 28 U.S.C. § 2254(d)(1) only if the state court adjudication of petitioner's claim was contrary to or an unreasonable application of United States Supreme Court precedent?

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BRIEF IN OPPOSITION

Respondent, Nedra Chandler, respectfully requests that the Court deny the petition for a writ of certiorari filed by petitioner, Andrew Lockhart. The petition seeks review of the judgment of the United States Court of Appeals for the Seventh Circuit, affirming the judgment of the United States District Court for the Northern District of Illinois, which denied petitioner habeas corpus relief pursuant to 28 U.S.C. § 2254.

STATEMENT

On April 4, 1993, petitioner broke into his estranged wife's apartment and, after speaking with her for an hour, shot her. Pet. App. 2. As she was lying on the ground, petitioner shot her again at close range, killing her. *Ibid.* On August 13, 1993, petitioner pled guilty to murder in Illinois state court and was sentenced to 35 years in prison. Pet. App. 7. By statute, Illinois imposes a mandatory three-year period of supervised release (MSR) to follow a prison sentence for murder. 730 ILCS 5/5-8-1(d). Petitioner never sought to withdraw his guilty plea. *See* Pet. App. 2. Instead, by collateral attack in state court, he asked that his MSR be either removed or incorporated into his 35-year prison sentence.

Pursuant to 28 U.S.C. § 2254, petitioner sought habeas relief, on the ground that the judge who accepted his guilty plea failed to advise him about MSR at the plea proceeding. Pet. App. 8. The district court held that petitioner merely alleged a violation of Illinois Supreme Court Rule 402, which requires an Illinois trial court to inform a defendant at a guilty plea of the nature of the charge, the minimum and maximum sentences, and the various rights the defendant waives by pleading guilty. Accordingly, the district court denied habeas relief, reasoning that, although petitioner attempted to state a due process violation, he failed to allege that his guilty plea was not

knowing and voluntary, and the sentencing judge's failure to inform petitioner of the mandatory supervised release period did not establish a *per se* constitutional violation. Pet. App. 8.

The Seventh Circuit disagreed with the district court that petitioner had failed to raise a federal due process claim. Pet. App. 3-4. However, the court affirmed the district court's decision to deny habeas relief, holding that no United States Supreme Court precedent existed clearly establishing a federal constitutional right to be informed of the mandatory supervised release period. Pet. App. 6. The Seventh Circuit grounded its holding on *Lane v. Williams*, 455 U.S. 624, 630 n.9 (1982), which stated: "We do not decide whether to establish such a constitutional violation, respondents must claim that they in fact did not know of the parole requirement at the time they pleaded guilty or that they would not have pleaded guilty had they known of this consequence." *See also* Pet. App. 5 (citing *Shabazz v. Perlman*, No. 04 Civ. 4355, 2005 WL 2105533, at *6 (S.D.N.Y Sept. 1, 2005) (explaining that the district court was "unable to find any Supreme Court case that requires a state court judge to advise a defendant of mandatory post-release supervision before accepting a guilty plea"); and *Lustyk v. Murray*, No. 03-CV-6186L, 2004 WL 1949473, at *2 (W.D.N.Y. Aug. 30, 2004) (explaining the district court could not find, nor could petitioner cite, to any Supreme Court case holding that a mandatory term of parole or post-release supervision is a direct consequence of a guilty plea)). The court explained that petitioner's reliance on Illinois cases and federal cases decided before the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) was misplaced: "Pointing to mostly pre-AEDPA cases from this circuit as well as from Illinois is a far cry from showing the state court contradicted, or unreasonably applied, clearly established law *as determined by the Supreme Court*, which [petitioner] is required to do." Pet. App. 4 (emphasis in original).

Petitioner now seeks a writ of certiorari.

REASONS FOR DENYING THE PETITION

Petitioner seeks review of the Seventh Circuit's determination that petitioner failed to show that the state court's judgment violated a clearly established federal constitutional right. He argues that the Seventh Circuit held that in considering petitions for habeas relief under AEDPA, federal courts are barred from considering lesser federal court and state court precedent. The Seventh Circuit did no such thing. Rather, it held only that "we (and state supreme courts) do not have the authority in these types of cases to establish new constitutional rights." Pet. App. 6. In other words, the Seventh Circuit held that it could not look to its own precedent, or state court precedent, as having established "clearly established federal law as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

The question petitioner presents to the Court is much broader: "[T]he current petition seeks to fill in the larger picture by addressing the question of what body of law can federal courts consider when determining if a state court decision is an unreasonable application of federal law as announced by this Court." Pet. 10-11. Because the issue presented was not decided by the Seventh Circuit, and the circuit's law on that subject does not create a split in the courts of appeals, certiorari review should be denied, and the instant petition should neither be granted nor held pending the disposition of *Carey v. Musladin*, No. 05-785. *See* Robert L. Stern, et al., *Supreme Court Practice* 459-60 (8th ed. 2002) ("In a surprisingly large number of cases every year, the petition raises questions that were not decided by the court below because they were not raised, or seriously mischaracterizes the holding of the court. Demonstrations of such a defect is ordinarily fatal to the petition.").

Petitioner describes the issue presented in unduly broad terms. Petitioner asks whether federal courts have the "authority, when determining whether a petitioner is entitled to a writ of habeas corpus pursuant to 28 U.S.C. § 2254, to consider decisions of the federal courts of appeal and state supreme courts that had applied clearly established precedent of this Court" (Pet. i), and "what body of law a federal court may consider when determining if a state court decision is an unreasonable application of federal law as announced by this Court." Pet. 11. However, that issue was neither presented to nor answered by the Seventh Circuit. The Seventh Circuit merely held that it could only consider Supreme Court precedent when identifying federal law for purposes of 28 U.S.C. § 2254(d)(1). The Seventh Circuit ruled that because this Court in *Lane* expressly declined to reach the issue presented by petitioner's case, there was no clearly established federal law as determined by this Court; it never decided the relevant body of law to determine the reasonable application of the Court's precedents.

The Seventh Circuit's reasoning and holding were entirely consistent with earlier Seventh Circuit decisions that help illuminate the distinction between the issue petitioner presents here and the issue actually decided by the court below. The Seventh Circuit has held that under AEDPA, it may look only to this Court's precedents to identify clearly established federal law for purposes of § 2254(d)(1), but that it may look to other court rulings as persuasive precedent regarding the reasonable application of that law. See *Easley v. Frey*, 433 F.3d 969, 974 (7th Cir. 2006); *Jackson v. Frank*, 348 F.3d 658, 665 (7th Cir. 2003) ("Although the only definitive source of clearly established federal law under the AEDPA is Supreme Court authority, the determination by one of our sister circuits that a misstatement of state law alone does not vitiate a *Miranda* waiver certainly makes it more difficult to conclude that the

Wisconsin Court of Appeals unreasonably applied Supreme Court authority.") (internal citation omitted).

Thus, petitioner relies on his vague and overly broad description of the issue presented to assert a circuit split where none exists. The Seventh Circuit's rule, applied in this case, that it may only look to Supreme Court precedent in determining established federal law under AEDPA is consistent with *Williams v. Taylor*, 529 U.S. 362, 412 (2000), and is not inconsistent with the decisions relied upon by petitioner to establish the alleged split. For example, as petitioner notes, "[t]he First Circuit has stated that, while federal court of appeals' decisions are not clearly established for the purposes of Section 2254(d)(1) because they do not issue from the Supreme Court, they provide significant insight on what constitutes reasonableness for a particular fact pattern." Pet. 8-9 (citing *Phoenix v. Matesanz*, 233 F.3d 77, 83 n.3 (1st Cir. 2000)) (internal quotations omitted). The First Circuit's rule is precisely consistent with the Seventh Circuit's rule, as stated in *Jackson* and *Easley*, and applied in this case. The same is true regarding the Third and Sixth Circuits, with which petitioner also claims the Seventh Circuit is in conflict. *See Chadwick v. Janecka*, 312 F.3d 597, 613 (3d Cir. 2002) (Alito, J.) ("It is true that federal habeas courts are not precluded form considering the decisions of the inferior federal courts when evaluating whether the state's court application of the law was reasonable. But this Court has clearly stated that decisions by lower federal courts may be considered only as helpful amplifications of Supreme Court precedent.") (internal quotations omitted); *Hill v. Hofbauer*, 337 F.3d 706, 716 (6th Cir. 2003) ("Although only Supreme Court case law is relevant under the AEDPA in examining what Federal law is clearly established, the decisions of the United States Courts of Appeals may be informative to the extent we have already reviewed and interpreted the relevant Supreme Court case law to determine whether a legal

principle or right had been clearly established by the Supreme Court.") (internal quotations omitted).

The Seventh Circuit and Ninth Circuit are in conflict presently about whether a federal court may look to inferior courts' decisions to determine "what law is clearly established." *See Musladin v. Lamarque*, 427 F.3d 653, 655 (9th Cir. 2005), *cert. granted, Carey v. Musladin*, 126 S. Ct. 1769 (2006). But this case did not create that split. More importantly, petitioner makes clear that this is not the question presented by his certiorari petition, which is "what body of law can federal courts consider when determining if a state court decision is an unreasonable application of federal law as announced by this Court." Pet. 10-11. There is no inconsistency between the Seventh and Ninth Circuit's rule on this issue. *Compare Musladin*, 427 F.3d at 655 ("Nevertheless, we recognize that precedent from this court, or any other federal circuit court, has persuasive value in our effort to determine whether a particular state court decision is an unreasonable application of Supreme Court law.") (internal quotations omitted) *with Jackson*, 348 F.3d at 665 (holding that a determination by a federal court of appeals is persuasive authority in determining whether a state court unreasonably applied Supreme Court authority). Because the issue petitioner would have the Court resolve is not that posed by *Musladin*, there is no reason to defer determination of the instant petition until after that case is decided.

Finally, the Seventh Circuit correctly held under this Court's precedent that there is no clearly established federal law guaranteeing a defendant the right to be informed at a guilty plea about a mandatory supervised release period. The Court explicitly declined to reach that question in *Lane*, 455 U.S. at 630 n.9 ("We do not decide whether, to establish such a constitutional violation, respondents must claim that they in fact did not know of the parole requirement at the time they pleaded guilty or that they would not have pleaded guilty had they

known of this consequence."). Petitioner argues that he is entitled to relief under the clearly established federal law that a guilty plea must be knowing and voluntary. See *Santobello v. New York*, 404 U.S. 257, 262 (1971); *Brady v. United States*, 397 U.S. 723, 748 (1970); *Boykin v. Alabama*, 395 U.S.238, 242-44 (1969). However, petitioner has never shown that his plea was not knowing and voluntary, or that he would not have pleaded guilty if he had known about MSR, alleging merely that he was not informed of the mandatory supervised release period. Because this Court has declined to establish a right to be informed of a period of supervision like that imposed here, the Seventh Circuit correctly held that petitioner was not entitled to habeas relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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